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Permanent Forum on Indigenous Issues
Eighth session
New York, 18-29 May 2009
Agenda item 3
Follow-up to the recommendations of the Permanent Forum

Follow-up to the recommendations of the Permanent Forum on economic and social development, indigenous women and the Second International Decade of the World's Indigenous People

Preamble

1. The principles of respect for and protection of the rights of indigenous peoples to free, prior and informed consent are set out in article 32 of the United Nations Declaration on the Rights of Indigenous Peoples (see General Assembly resolution 61/295). The free, prior and informed consent of indigenous peoples must be obtained before investments are made on projects affecting their lands, territories and resources and before such projects are brought into indigenous territories.

2. The Permanent Forum notes the recommendations contained in the Anchorage Declaration of 24 April 2009 and those made to the United Nations Climate Change Conference and to the Food and Agriculture Organization of the United Nations. The Forum also notes in particular the objections raised by indigenous peoples of the Arctic to the proposal contained in the Declaration to adopt a moratorium on oil and gas exploitation.

3. The Permanent Forum expresses its grave concern over the significant increase in the infrastructure budget of the World Bank from 15 per cent to 45 per cent in 2009 for the primary economies of developing States. The implications of this development in relation to the respect and protection of indigenous peoples' rights have to be clearly understood, and the imperative of getting the free, prior and informed consent of indigenous peoples affected by infrastructure projects has to be guaranteed. The Forum also notes that the World Bank has been given no additional operational budget to manage this large increase in infrastructure spending.

4. The Permanent Forum welcomes such initiatives as the indigenous and local community, business and biodiversity consultation, held at United Nations Headquarters in New York on 12 and 13 May 2009, as a useful dialogue between the

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private sector and indigenous peoples, and encourages further discussions with a view to ensuring the effective implementation of the United Nations Declaration on the Rights of Indigenous Peoples while stimulating community-level businesses based on the sustainable use of biodiversity through such creative partnerships.

5. It was noted that although corporations, owing to the pressures on and struggles of indigenous peoples, were now more willing to consult with communities, efforts fell far short of true free, prior and informed consent. There was a major problem with the lack of full disclosure of information regarding environmental, social, cultural and human rights impacts. One frequently encountered problem was that corporations, sometimes in collusion with Government authorities, selected indigenous individuals or specific communities with which to negotiate without ensuring that they represented their communities and/or the affected area. By doing so they divided indigenous peoples within the communities. There was a frustrating practice among some extractive industries to treat benefit-sharing or social programmes as charity rather than as a human rights issue.

Economic and social development

6. During all its sessions, the Permanent Forum has issued recommendations on economic and social development. Between the second and seventh sessions, the Forum issued approximately 150 recommendations on economic and social development, including those issued under agenda items on questions other than economic and social development.

7. The Permanent Forum has paid particular attention to the participation and representation of indigenous peoples in development processes, such as those related to the Millennium Development Goals, data collection and disaggregation, and urban indigenous peoples and migration. The Forum has recommended on numerous occasions that United Nations agencies, international financial institutions and other development actors change their paradigms and approaches to their work with indigenous peoples, including increased mainstreaming of indigenous peoples' issues in their work, respect for the principle of free, prior and informed consent, recognition of collective rights and increased participation of indigenous peoples in programme design, implementation and monitoring.

8. The Permanent Forum supports the conceptual and policy framework proposed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. This framework rests on three pillars: first, the duty of the State to protect against human rights abuses by third parties, including transnational corporations and other bu iness enterprises, through appropriate policies, regulation and adjudication; second, the corporate responsibility to respect human rights, which means acting with due diligence on all matters to avoid infringing on the rights of others; and third, greater access for victims to effective remedies, both judicial and non-judicial.

9. The Permanent Forum supports the work of the Special Representative to urge States to drive the human rights agenda into those areas that most affect business practices, including corporate law, export credit and insurance, investments and trade agreements. The Forum suggests the Special Representative to urge States to ensure that such business practices comply with the relevant provisions of the Declaration. The Forum urges the Special Representative to incorporate the specific

views and distinct perspectives of indigenous peoples on social and economic development. Regarding the Americas, corporations must also comply with the rulings of the Inter-American Court of Human Rights, which construe the States' obligations under the International Labour Organization (ILO) Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries with regard to the Declaration as extending even to States that have not ratified the Convention.

10. The Permanent Forum recommends that transnational corporations and other business enterprises adopt standards of human rights due diligence to protect, raise awareness of and prevent adverse human rights impacts on indigenous peoples. This process has four core elements: the existence of a human rights policy; assessment of the impact on human rights of company activities; integration of those values and findings into corporate culture; and tracking of and reporting on performance.

11. The Permanent Forum recommends that in the case of projects affecting indigenous peoples, States ensure that transnational corporations and other business enterprises comply with specific standards contained in the Declaration and ILO Convention No. 169.

12. The Permanent Forum recommends that, in order to ensure access to effective remedies, States enforce corporate compliance with relevant laws and standards. Transnational corporations and other business enterprises should put into place operational-level grievance mechanisms to provide early warning and help resolve problems before they escalate. Significant barriers to accessing effective judicial and non-judicial remedies persist, and the Forum supports the work of the Special Representative in identifying and proposing ways of eliminating those barriers.

13. The Permanent Forum supports the recommendations of the international expert group meeting on extractive industries, indigenous peoples' rights and corporate responsibility addressed to extractive industry corporations, States, United Nations agencies, funds and programmes, indigenous peoples, nations and organizations, and international financial institutions, contained in a paper presented to the Forum.

14. The Permanent Forum decides to appoint as Special Rapporteur Vicki Tauli-Corpus, a member of the Forum, to conduct a study on the impacts of the global economic crisis on indigenous peoples, to identify measures and proposals for Governments and United Nations bodies, agencies, funds and programmes to address the impacts and to report thereon to the Forum at its ninth session, in 2010.

15. The Permanent Forum decides to organize an international expert group meeting, without financial implications, on indigenous peoples' development with culture and identity, which would link the issues of the global economic crisis and the climate change crisis to indigenous peoples.

16. The Permanent Forum calls upon States and corporations to fully recognize the presence and participation of indigenous peoples in all negotiation processes relating to the entry of extractive industries, infrastructure projects and other development projects into their communities.

17. The Permanent Forum calls upon those Governments which have granted leases, concessions and licences on indigenous peoples' territories for projects related to logging, mineral, oil and water without proper consultation and without

respecting the free, prior and informed consent of the indigenous peoples concerned to review those arrangements and to address the complaints raised by indigenous peoples in those territories.

18. The Permanent Forum recommends that patent offices worldwide establish a mechanism whereby, when a patent is requested for a new product or procedure derived from indigenous peoples' resources or traditional knowledge, the origin of this knowledge is made public or otherwise disclosed and that the necessary consultations and negotiations take place with the indigenous peoples concerned.

19. The Permanent Forum commends the inclusion of the European Bank for Reconstruction and Development of free, prior and informed consent in its policy on indigenous peoples, and strongly urges other multilateral and bilateral financial institutions to follow this example. In particular, the Forum calls upon the Asian Development Bank to ensure that free, prior and informed consent and the provisions of the Declaration are integrated into its revised policy on indigenous peoples. It also calls upon the World Bank and the International Finance Corporation to review their policies and adopt free, prior and informed consent as the central principle in their dealings with indigenous peoples instead of the present free, prior, informed consultation. The international financial institutions should develop a strategy to raise staff awareness at the national and headquarters levels on indigenous peoples' rights and development perspectives and thereby improve their relationships with indigenous peoples at the country level.

20. The Permanent Forum recommends that corporations, regulating bodies and certification bodies incorporate the rights of indigenous peoples in their quality standards, operating plans, business plans and investment plans. An international standard providing guidelines for social responsibility (ISO 2600), which is currently in the drafting stage with publication expected at the end of 2010, should be certifiable and serve as a framework for corporations to show their respect and good faith towards indigenous peoples.

21. The Permanent Forum endorses the recommendations submitted on 8 May 2009 to the fourth meeting of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants by the Indigenous Peoples' Caucus to increase and ensure the formal participation of indigenous peoples in that process.

22. The Permanent Forum recommends that the Inter-agency Support Group on Indigenous Issues convene an international technical expert seminar on indicators on the well-being of indigenous peoples to discuss indicators that could be used in monitoring the situation of indigenous peoples and the implementation of the Declaration.

23. The Permanent Forum endorses the recommendations of the International Technical Workshop on Indicators Relevant for Indigenous Peoples (see E/C.19/2009/6).

24. The Permanent Forum decides to extend the mandate of the Special Rapporteurs on indigenous peoples and corporations, Carlos Mamani Condori, Elisa Canqui Mollo and Pavel Sulyandziga, for one year, and requests them to submit a written report to the Forum at its ninth session.

Indigenous women

25. The Permanent Forum recommends that the United Nations Population Fund convene an international expert workshop on the theme "Indigenous peoples and health, with special emphasis on sexual and reproductive health", and that it submit a report thereon to the Forum at its ninth session.

26. The Permanent Forum invites the Special Rapporteur on the human rights of migrants to prepare a study on the situation of indigenous women migrants.

27. The Permanent Forum urges States, with the effective participation of indigenous peoples, to address the concomitant loss of community citizenship and human rights when indigenous peoples are forced to migrate or are displaced by violent conflicts, with a particular emphasis on indigenous women.

Second International Decade of the World's Indigenous People

28. The Permanent Forum recommends that Member States, United Nations agencies and indigenous peoples' organizations engage actively in the midterm evaluation of the Second International Decade of the World's Indigenous People and submit reports evaluating the implementation of the Decade at the national level.

29. The Permanent Forum recommends that States support the trust fund on indigenous issues as an important contribution to the implementation of the goal and objectives of the Decade.

30. The Permanent Forum recommends that the General Assembly rename the Decade "Second International Decade of World's Indigenous Peoples".

31. The Permanent Forum recommends that States and United Nations agencies apply the rights affirmed in the Declaration throughout their operational frameworks for implementing the Programme of Action for the Decade, in particular its objective on free, prior and informed consent by indigenous peoples.

32. The Permanent Forum commends Australia for changing its position by endorsing the Declaration, and calls upon the three remaining States that are opposed to it (Canada, New Zealand and the United States of America), as well as those abstaining, to reverse their positions and to endorse the Declaration so as to achieve full consensus.

33. The Permanent Forum calls upon the Department of Economic and Social Affairs to publish a comprehensive report on the state of indigenous peoples, similar to the Human Development Report, to mark the Decade.

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Permanent Forum on Indigenous Issues
Eighth session
New York, 18-29 May 2009
Agenda item 3
Follow-up to the recommendations of the Permanent Forum

Follow-up to the recommendations of the Permanent Forum on economic and social development, indigenous women and the Second International Decade of the World's Indigenous People

Preamble

1. The principles of respect for and protection of the rights of indigenous peoples to self-determination (articles 3 and 32) and development (article 23), including to free, prior and informed consent (article 32), are set out in the United Nations Declaration on the Rights of Indigenous Peoples (see General Assembly resolution 61/295). The free, prior and informed consent of indigenous peoples must be obtained before investments are made on projects affecting their lands, territories and resources and before such projects are brought into indigenous lands and territories.

2. The Permanent Forum notes the Anchorage Declaration of 24 April 2009.

3. The Permanent Forum has paid particular attention to the significant increase in the infrastructure budget of the World Bank, from $15 billion to $45 billion in 2009, for the primary economies of developing States. The implications of this development in relation to the respect and protection of indigenous peoples' rights have to be clearly understood, and the imperative of getting the free, prior and informed consent of indigenous peoples affected by infrastructure projects has to be guaranteed. The Forum also notes that the World Bank has been given no additional operational budget to manage this large increase in infrastructure spending.

4. The Permanent Forum welcomes such initiatives as the indigenous and local community, business and biodiversity consultation, held at United Nations Headquarters in New York on 12 and 13 May 2009, as a useful dialogue between the private sector and indigenous peoples, and encourages further discussions with a view to ensuring the effective implementation of the United Nations Declaration on

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the Rights of Indigenous Peoples while stimulating community-level businesses based on the sustainable use of biodiversity through such creative partnerships.

5. The Permanent Forum notes that corporations, owing to the pressures on and struggles of indigenous peoples, were now more willing to consult with communities. However, the lack of full disclosure of information on human rights impacts, including the impact on environmental, social, cultural and spiritual rights, impeded full protection of the right to free, prior and informed consent. One problem encountered frequently is manufactured consent, which results from negotiating with selected indigenous individuals or specific communities without ensuring that they represent their communities and/or the affected area, creating divisions within the communities. Extractive industries must treat benefit-sharing and/or social programmes as a requisite economic practice.

Economic and social development

6. During all of its sessions, the Permanent Forum has issued recommendations on economic and social development. Between the second and seventh sessions, the Forum issued approximately 150 recommendations on economic and social development, including those issued under agenda items on questions other than economic and social development. On a positive note, the Forum highlights that more than half of those recommendations are being implemented.

7. The Permanent Forum has paid particular attention to the participation and representation of indigenous peoples in development processes, such as those related to the Millennium Development Goals, data collection and disaggregation, and urban indigenous peoples and migration. The Forum has recommended on numerous occasions that United Nations agencies, international financial institutions and other development actors change their paradigms and approaches to their work with indigenous peoples. This includes increased mainstreaming of indigenous peoples' issues in their work, respect for the principle of free, prior and informed consent, recognition of collective rights, including treaty rights, and increased participation of indigenous peoples, including women, in programme design, implementation and monitoring.

8. The Permanent Forum supports the conceptual and policy framework proposed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. This framework rests on three pillars: first, the duty of the State to protect against human rights abuses by third parties, including transnational corporations and other business enterprises, through appropriate policies, regulation and adjudication; second, the corporate responsibility to respect human rights, which means acting with due diligence on all matters to avoid infringing on the rights of others; and third, greater access for victims to effective remedies, both judicial and non-judicial.

9. The Permanent Forum supports the work of the Special Representative to urge States to integrate human rights into those areas that most affect business practices, including corporate law, export credit and insurance, investments and trade agreements. The Forum suggests that the Special Representative urge States to ensure that such business practices comply with the relevant provisions of the United Nations Declaration on the Rights of Indigenous Peoples. The Forum urges the Special Representative to incorporate the specific views and distinct perspectives of indigenous peoples on social and economic development. Regarding

the Americas, corporations must also comply with the rulings of the Inter-American Court of Human Rights, which construe the States' obligations under the International Labour Organization (ILO) Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries with regard to the Declaration as extending even to States that have not ratified the Convention. The Forum recommends that this principle be applied in other jurisdictions.

10. The Permanent Forum recommends that transnational corporations and other business enterprises adopt minimum standards consistent with the United Nations Declaration on the Rights of Indigenous Peoples as a requirement of due diligence. This process has four core elements: the existence of a human rights policy; assessment of the impact on human rights of company activities; integration of those values and findings into corporate culture; and tracking of and reporting on performance.

11. The Permanent Forum recommends that in the case of projects affecting indigenous peoples, States ensure that transnational corporations and other business enterprises comply with specific standards contained in the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169.

12. The Permanent Forum recommends that, in order to ensure access to effective remedies, States enforce corporate compliance with relevant laws and standards. Transnational corporations and other business enterprises should put into place operational-level grievance mechanisms to provide early warning and help resolve problems before they escalate. Significant barriers to accessing effective judicial and non-judicial remedies persist, and the Forum supports the work of the Special Representative in identifying and proposing ways of eliminating those barriers.

13. The Permanent Forum supports the recommendations of the international expert group meeting on extractive industries, indigenous peoples' rights and corporate responsibility addressed to extractive industry corporations, States, United Nations agencies, funds and programmes, indigenous peoples, nations and organizations, and international financial institutions, contained in a paper presented to the Forum (E/C.19/2009/CRP.8).

14. The Permanent Forum decides to appoint as Special Rapporteur Victoria Tauli-Corpuz, a member of the Forum, to conduct a study on the impacts of the global economic crisis on indigenous peoples, to identify measures and proposals for Governments and United Nations bodies, agencies, funds and programmes to address the impacts and to report thereon to the Forum at its ninth session, in 2010.

15. The Permanent Forum decides to organize an international expert group meeting, without financial implications, on indigenous peoples' development with culture and identity, pursuant to articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples, which would link the issues of the global economic crisis and the climate change crisis to indigenous peoples.

16. The Permanent Forum calls upon States and corporations to fully recognize the presence and effective participation of indigenous peoples in all negotiation processes relating to the entry of extractive industries, infrastructure projects and other development projects into their communities, consistent with the United Nations Declaration on the Rights of Indigenous Peoples, inter alia, articles 19, 23 and 32. Furthermore, the Forum calls upon all relevant actors to ensure the application of culturally relevant, gender-balanced and gender-based analysis and

gender budgeting as critical elements of economic and social development, consistent with articles 21 and 44 of the Declaration.

17. The Permanent Forum calls upon those States which have granted leases, concessions and licences on indigenous peoples' territories for projects related to logging, minerals, oil, gas and water without proper consultation and without respecting the free, prior and informed consent of the indigenous peoples concerned to review those arrangements and to address the complaints raised by indigenous peoples in those territories.

18. The Permanent Forum recommends that patent offices worldwide establish a mechanism whereby, when a patent is requested for a new product or procedure derived from indigenous peoples' resources or traditional knowledge, the origin of this knowledge is made public or otherwise disclosed and that the necessary consultations and negotiations take place with the indigenous peoples concerned.

19. The Permanent Forum commends the inclusion by the European Bank for Reconstruction and Development of free, prior and informed consent in its policy on indigenous peoples, and strongly urges other multilateral and bilateral financial institutions to follow this example. In particular, the Forum calls upon the Asian Development Bank to ensure that free, prior and informed consent and the provisions of the United Nations Declaration on the Rights of Indigenous Peoples are integrated into its revised policy on indigenous peoples. It also calls upon the World Bank and the International Finance Corporation to review their policies and adopt free, prior and informed consent as the central principle in their dealings with indigenous peoples instead of the present free, prior, informed consultation. The international financial institutions should develop a strategy to raise staff awareness at the national and headquarters levels on indigenous peoples' rights and development perspectives and thereby improve their relationships with indigenous peoples at the country level.

20. The Permanent Forum recommends that corporations, regulating bodies and certification bodies incorporate the rights of indigenous peoples in their quality standards, operating plans, business plans and investment plans.

21. The Permanent Forum endorses the recommendations submitted on 8 May 2009 to the fourth meeting of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants by the Indigenous Peoples' Caucus to increase and ensure the formal participation of indigenous peoples in that process.

22. The Permanent Forum endorses the recommendations of the International Technical Workshop on Indicators Relevant for Indigenous Peoples (see E/C.19/2009/6).

23. The Permanent Forum decides to extend the mandate of the Special Rapporteurs on indigenous peoples and corporations, Carlos Mamani Condori, Elisa Canqui Mollo and Pavel Sulyandziga, for one year, and requests them to submit a written report to the Forum at its ninth session, in 2010.

Indigenous women

24. The Permanent Forum recommends that the United Nations Population Fund organize, in coordination with the secretariat of the Forum an international expert workshop on the theme "Indigenous peoples and health, with special emphasis on

sexual and reproductive health", and that a report of the expert workshop be submitted to the Forum at its ninth session, in 2010.

25. The Permanent Forum invites the Special Rapporteur on the human rights of migrants to prepare a study on the situation of indigenous women migrants.

26. The Permanent Forum urges States, with the effective participation of indigenous peoples, to address the concomitant loss of community citizenship and human rights when indigenous peoples are forced to migrate or are displaced by violent conflicts, with a particular emphasis on indigenous women.

27. In the context of the process of the High-level Panel on United Nations System-wide Coherence, in particular gender equality architecture reform, the Permanent Forum recommends that States and the United Nations system ensure the inclusion of the priorities and demands of indigenous women.

28. The Permanent Forum recommends that the Division for the Advancement of Women of the Department of Economic and Social Affairs guarantee the participation of indigenous women during the 15-year review of the Beijing Declaration and Platform for Action at the fifty-fourth session of the Commission on the Status of Women, in 2010.

29. The Permanent Forum recommends that the Inter-agency Support Group on Indigenous Peoples' Issues convene an international technical expert seminar on indicators of the well-being of indigenous peoples to discuss indicators that could be used in monitoring the situation of indigenous peoples and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. Furthermore, the Forum recommends that relevant United Nations bodies and agencies, States and indigenous peoples conduct assessments of the extent to which they have advanced the recommendations of the Forum on indigenous women, utilizing the framework of the Declaration, as set out by the International Indigenous Women's Forum. Action for the immediate implementation of these recommendations is required by all.

Second International Decade of the World's Indigenous People

30. The Permanent Forum recommends that Member States, United Nations agencies and indigenous peoples' organizations engage actively in the midterm evaluation of the Second International Decade of the World's Indigenous People and submit reports evaluating the implementation of the Decade at the national level.

31. The Permanent Forum recommends that the General Assembly rename the Decade "Second International Decade of the World's Indigenous Peoples".

32. The Permanent Forum recommends that States support the trust fund on indigenous issues as an important contribution to the implementation of the goal and objectives of the Decade.

33. The Permanent Forum recommends that States and United Nations agencies apply the rights affirmed in the United Nations Declaration on the Rights of Indigenous Peoples throughout their operational frameworks for implementing the Programme of Action for the Decade, in particular its objective on free, prior and informed consent by indigenous peoples.

34. The Permanent Forum recognizes and commends Australia for changing its position by endorsing the United Nations Declaration on the Rights of Indigenous Peoples, and calls upon the remaining States that are opposed to it, as well as those abstaining, to reverse their positions and endorse the Declaration so as to achieve full consensus.

35. The Permanent Forum calls upon the Department of Economic and Social Affairs to publish a comprehensive report on the state of indigenous peoples, similar to the Human Development Report, to mark the Decade.

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Permanent Forum on Indigenous Issues
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Agenda items 4 (a) and (b)
Human rights:
(a) Implementation of the United Nations Declaration on the Rights of Indigenous Peoples
(b) Dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and other special rapporteurs

Follow-up to the recommendations of the Permanent Forum on Indigenous Issues on implementation of the United Nations Declaration on the Rights of Indigenous Peoples and on dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples and other special rapporteurs

1. Pursuant to article 38 of the United Nations Declaration on the Rights of Indigenous Peoples, the Permanent Forum reiterates its invitation to States to provide the Permanent Forum with substantive information on the implementation of the Declaration and an assessment of the effectiveness of the Declaration at the national and local levels.

2. The Permanent Forum recommends that States incorporate adequate information on the implementation of the Declaration in their core reports to the human rights treaty bodies.

3. The Permanent Forum recommends that the relevant treaty bodies take into account the Declaration and urges States to include information regarding its implementation also in their reports to the universal periodic review.

4. The Permanent Forum recommends that States establish, where it does not already exist, a national dialogue with indigenous peoples on human rights, based on the Declaration.

5. The Permanent Forum recommends that the Secretary-General provide adequate human and financial resources for the purpose of meeting the requirements of articles 41 and 42 of the Declaration as they apply to the Permanent Forum.

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6. The Permanent Forum recommends that all United Nations agencies, funds and programmes, as well as the African Commission on Human and Peoples' Rights, integrate relevant provisions of the Declaration into their policies, programmes, projects and strategies.

7. The Permanent Forum recommends that States support the creation of indigenous language and cultural studies centres in universities and encourage universities to provide permanent teaching positions for indigenous peoples in those study centres; urges States to adopt a policy of free university tuition for all indigenous peoples; encourages those universities that have not already done so to establish designated places and scholarships for indigenous students; and encourages the United Nations Educational, Scientific and Cultural Organization to support those initiatives where applicable.

8. The Permanent Forum adopts general comment No. 1 (2009), entitled "Article 42 of the United Nations Declaration on the Rights of Indigenous Peoples" (see annex).

9. The Permanent Forum recommends that all States apply the principles of general comment No. 11 (2009) of the Committee on the Rights of the Child entitled "Indigenous children and their rights under the Convention".

10. The Permanent Forum recognizes the cultural significance and medical importance of the coca leaf in the Andean and other indigenous regions of South America. It also notes that coca leaf chewing is specifically banned by the Convention on Narcotic Drugs (1961). The Permanent Forum recommends that those portions of the Convention regarding coca leaf chewing that are inconsistent with the rights of indigenous peoples to maintain their traditional health and cultural practices as recognized in articles 11, 24 and 31 of the Declaration, be amended and/or repealed.

11. The Permanent Forum takes note of the 2009 report of the International Labour Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations, particularly the general observation and the nine individual observations on implementation of ILO Convention No. 169 on indigenous and tribal peoples. The Forum welcomes the increased attention paid by the Committee to ILO Convention No. 169 and calls upon the Committee to fully incorporate the United Nations Declaration on the Rights of Indigenous Peoples in its individual observations as a source of interpretation of the Convention.

12. The Permanent Forum notes that the observations adopted by the Committee of Experts incorporate relevant parameters for the implementation of the Convention by States parties in good faith. The Permanent Forum also observes that in five instances, the Committee demanded that State parties provide additional reports for the Committee at its next session, instead of in 2013, as originally planned. Those requests for advanced reports illustrate that, in a number of countries, serious obstacles still exist in relation to the enjoyment of indigenous peoples' fundamental rights, as affirmed in ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples.

13. In this connection, and in respect of articles 41 and 42 of the Declaration, the Permanent Forum trusts that, at its next session, the Conference Committee on the Application of Standards of the International Labour Conference will pay due attention to the cases of violation of ILO Convention No. 169, which have been

signalled by the Committee of Experts, in the light of the Declaration, and urges States to respond promptly to the reports of the Committee of Experts.

14. The Permanent Forum recommends that an appropriate form of coordination should be explored between the Committee of Experts and the Forum regarding the implementation of ILO Convention No. 169. The Permanent Forum reiterates the need for a mechanism of coordination to also be established between the ILO supervisory mechanisms and indigenous peoples, which may include the establishment of an ad hoc committee consisting of indigenous representatives or experts.

15. The Permanent Forum commends the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples for his efforts on behalf of indigenous peoples around the world and recommends that he continue his work in conformity with the principles he has established.

16. The Permanent Forum welcomes cooperation with the Special Rapporteur and the Expert Mechanism on the Rights of Indigenous Peoples, which is to be conducted in order to ensure maximum complementarities of efforts.

17. The Permanent Forum calls on States to consult with indigenous peoples in a manner that fully respects their obligations under the Declaration and fully responds to the goals, needs and rights of indigenous peoples in the development and design of relevant legislation.

18. The Permanent Forum reiterates its previous recommendations that those States that have not already done so adopt or endorse, where applicable, the convention on the rights of indigenous peoples, ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples.

19. The Permanent Forum welcomes the effort of the Association of Southeast Asian Nations (ASEAN) to establish its human rights mechanism and offers its expertise and cooperation in this matter. The Forum recommends that the mechanism be called the "ASEAN Human Rights Commission" and that the commission explicitly recognize indigenous peoples in its terms of reference. We look forward to a strong "ASEAN Human Rights Commission", with full investigatory and implementation powers, which uses the United Nations Declaration on the Rights of Indigenous Peoples as its framework in dealing with indigenous peoples issues. The Forum also recommends that the commission establish a committee on indigenous peoples in addition to its proposed committees on migrant workers and women and children.

Annex

General comment No. 1 (2009)

"Article 42 of the United Nations Declaration on the Rights of Indigenous Peoples"

Article 42 as basis for a new function

1. The purpose of the United Nations Declaration on the Rights of Indigenous Peoples is to constitute the legal basis for all activities in the areas of indigenous issues. The task of the Permanent Forum on Indigenous Issues in the years to come, following the historical adoption of the Declaration by the General Assembly on 13 September 2007, will be to act within its capacity to transform the Declaration in its entirety into living law. Implementation to the living law will have been fulfilled when the indigenous peoples achieve practical results on the ground.

2. The Declaration built a new foundation for the rights of indigenous peoples. At the same time, the Forum was assigned an extended mandate with a new function based on article 42, which stipulates that:

> The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

3. The goal of this general comment is to determine and detail, to some extent, what the obligations of the Forum are, as laid down in article 42 of the Declaration and how the Forum can fulfil those obligations. In order to determine and detail such obligations and actions, one must clarify the legal understanding of the article. This must be discussed on the basis of the status of the Declaration as an international law instrument of a human rights character.

4. The Forum is the only United Nations body expressly mentioned in the article. This wording emphasizes that the Forum, as a United Nations body particularly created for indigenous issues, has a responsibility to realize the purpose of the article.

5. The Forum was established pursuant to Economic and Social Council resolution 2000/22. As an advisory body to the Economic and Social Council, the Forum has so far had six mandated areas, namely indigenous issues related to economic and social development, culture, environment, education, health and human rights. Even though the Forum is a subsidiary body of the Council, the General Assembly can, as the global body within the United Nations system, extend and strengthen the mandate of the Forum. Article 42 introduces a new function and responsibility, which should be read in the light of the article as a source of international law.

The legal character of the Declaration

6. The Declaration is the most universal, comprehensive and fundamental instrument on indigenous peoples rights. It is the legal framework of the Forum, together with resolution 2000/22 of the Economic and Social Council. The Declaration is not a treaty and it accordingly does not have the binding force of a

treaty. However, this does not at all mean that the Declaration is without any legally binding effect. The adoption of any human rights instrument by the United Nations aspires to some binding force. The binding value of the Declaration must be seen in the wider normative context of the innovations that have taken place in international human rights law in recent years.

7. The Declaration forms a part of universal human rights law. The basic principles of the Declaration are identical to those of the main human rights covenants. In this way the Declaration affirms, in its article 3, the right of indigenous peoples to self-determination, in terms that restate the common provisions of article 1 of the two 1966 international covenants. The human rights treaty bodies will need to refer to the Declaration, as their practice already indicates, whenever dealing with indigenous rights. The Declaration is not the instrument of a specialized agency that binds only the State parties, but is a general instrument of human rights.

8. The Declaration is a human rights standard elaborated upon the fundamental rights of universal application and set in the cultural, economic, political and social context of indigenous peoples. It should be applied on this basis regardless of how each State voted in the General Assembly or their subsequent position. One may debate how many of the specific rights in the Declaration are human rights according to the core human rights instruments. The human rights nature of the Declaration, seen as a whole, is certainly so marked; this should be a main element when interpreting the document and when deciding the working methods of the Forum in the context of article 42.

9. The Declaration is an instrument having been drafted through a procedure that has conferred upon it a special status as a declaration. It was developed during a decade of negotiations between representatives of States and representatives of indigenous peoples, "negotiations" being a word used several times by State representatives. This long-lasting procedure resulted in a document expressing a broad common ground, which has now also been endorsed by the General Assembly. Even though it is not formally an agreement, in reality, the document is by way of its creation an instrument almost universally agreed upon. In this way, the Declaration is part of a practice that has advanced a growing "rapprochement" between declarations and treaties.

10. The various articles may be part of binding international law, based on other instruments or customs, independent of their inclusion in the Declaration. The human rights envisaged in the Declaration are the same human rights that have been recognized for the rest of humankind, but there has been no need to produce a special declaration on the rights of non-indigenous peoples. A number of the articles are based on the human rights covenants and other conventions, or they may already today have the quality of customary law by virtue of policies implemented in national jurisdictions. As expressions of international customary law, they must be applied regardless of the nature of the document in which they are stated or agreed.

11. The voting of the General Assembly, which proves that a great majority of the international community stands behind the Declaration, is a significant factor when determining the legal strength of the Declaration. Article 38 of the Statute of the International Court of Justice, stating the sources of international law that the Court shall apply, includes among them "the general principles of law recognized by civilized nations". The Declaration is formulated on "principles of law", having

"rights" as the main concept, and the worldwide adherence to the Declaration, with the small and shrinking group of negative States, may soon be considered as a fulfilment of the criterion of the "civilized nations".

12. The combined effect of these elements gives the Declaration a growing legal status. It might be argued that the Declaration in its entirety already has acquired the status of being part of binding international law. In any way, this is the case already for a number of the articles.

13. The understanding of the Declaration here described shall form the basis on which the Forum is going to undertake its activities. The Forum has already included an item on the Declaration on its agenda.

The effect of article 42

14. This new function assigned to the Forum pursuant to article 42 is far-reaching. The formulas of the provision are of a twofold nature.

15. In the first place, the Forum shall promote not only respect for but also "full application" of the Declaration. This implies that the Forum shall work to promote the incorporation of the Declaration into national legislation as well as its application in the national courts and administrative decisions of the various countries.

16. Second, the Forum shall follow up "the effectiveness" of the Declaration, that is, to see whether the realities ("law in action") are in conformity with the written law and decisions ("law in books"), and if not, take necessary actions to close the implementation gap.

17. This new and extensive responsibility does not, in the wording of the article, correspond with any authority to accomplish what is required in this regard. The authority of the Forum will accordingly have to be decided by way of a reading of article 42 on the basis of the Declaration as a whole. In this process of interpretation one has to rely on some principles or guidelines that are within the spirit of the Declaration.

18. Some accepted guidelines for interpretation will in this case be the workings of the Forum so far, the purpose of article 42 and the normal way of protecting human rights within the United Nations system.

19. The present working arrangement of the Forum has to be a starting point for the reading of the new article. The purpose of article 42 is to contribute to the effectiveness of the Declaration, and the reading of the Article should therefore give preference to working methods for the Forum that are oriented towards substantial results for the indigenous peoples as rights holders. Looking to the normal way of protecting human rights within the United Nations system will also find support in the wording of the article, where the Forum is placed on a par with other bodies of the United Nations.

20. When the Permanent Forum develops working methods for fulfilling its new article 42 responsibility, one should accordingly look to the system established for other rights of a human rights character. The treaty bodies of the human rights conventions should be regarded as models for the Forum.

21. This interpretation implies an authority to arrange dialogues with States regarding application of the Declaration and, thereafter, to follow up on its effectiveness by making conclusions relating to each State's behaviour in the context of the Declaration, containing criticism on implementation gaps and demands for reforms. This interpretation furthermore implies that States have a duty to respond to a demand by the Forum for dialogue on the Declaration. Article 42 does not expressly empower the Forum to summon States to appear in the meetings of the Forum and answer the questions put by the members. The Forum may accordingly decide for practical and political reasons not to put this conclusion to the test in the beginning and, rather, advance along a voluntary road in relation to the States.

22. These dialogues should have information provided by Governments on their national policies and practices as a principal basis. Creative ways should be developed for the substantive preparation of dialogues, such as dispatching to States a questionnaire regarding implementation. Such reports on indigenous peoples will need to be produced according to article 38 of the Declaration, in consultation and cooperation with indigenous peoples. Information from indigenous peoples organizations, from various non-governmental organizations and from Forum members must also be included as important supplementary material. The aim would be to organize a formally structured and substantially constructive dialogue followed by concluding remarks from the Forum.

23. The Forum shall integrate the Declaration into its recommendations on the six substantive mandated areas of its work as well as in its work under the special theme for the relevant sessions and its ongoing themes and priorities. In doing so, the Forum should consider not only the articles of the Declaration but also the preambular paragraphs.

24. The Forum shall, as one of the three United Nations mechanisms with specific mandates to address indigenous peoples, collaborate and coordinate its work with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, and with the Expert Mechanism on the Rights of Indigenous Peoples, in order to ensure maximum complementarity of efforts. These three mechanisms have the challenge of promoting the application and the effectiveness of the Declaration throughout the bodies and agencies of the United Nations.

25. The Forum shall, according to article 42, look to the Declaration as a set of superior norms that ought to be effectively applied in all national jurisdictions. Thereby, the Declaration will gain in the workings of the Forum a superior status in relation to national law. Moreover, it is the duty of the Forum to spread this view all over the world.

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Permanent Forum on Indigenous Issues
Eighth session
New York, 18-29 May 2009
Agenda item 8
Provisional agenda for the ninth session of the Permanent Forum

Provisional agenda for the ninth session of the Permanent Forum

1. Election of officers.
2. Adoption of the agenda and organization of work.
3. Discussion on the special theme for the year, "Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples".
4. Human rights:
   (a) Implementation of the United Nations Declaration on the Rights of Indigenous Peoples;
   (b) Dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and other special rapporteurs.
5. Half-day discussion on North America.
6. Comprehensive dialogue with six United Nations agencies and funds.
7. Future work of the Permanent Forum, including issues of the Economic and Social Council and emerging issues.
8. Draft agenda for the tenth session of the Permanent Forum.
9. Adoption of the report of the Permanent Forum on its ninth session.

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Permanent Forum on Indigenous Issues
Eighth session
New York, 18-19 May 2009
Agenda item 5
Half-day discussion on the Arctic

Recommendations of the Permanent Forum on the Arctic

1. The Arctic is an enormous area, sprawling over one sixth of the Earth's landmass, spanning more than 30 million square kilometres and 24 time zones. The region has a population of about 4 million people and is home to over 30 different indigenous peoples who speak dozens of languages. The Arctic is a region of vast natural resources, with a very clean environment compared with most areas of the world.

2. The indigenous peoples of the Arctic depend upon their lands, territories and natural resources, including marine resources, for their material and cultural survival. To survive as distinct peoples, indigenous peoples of the Arctic must be able to own, use, conserve and manage their lands, territories and resources. Although, there has been progress in some of the Arctic countries and at the regional level, as far as recognition of indigenous land rights, territories and resource are concerned, there are still many unresolved matters that require urgent attention.

3. Climate change and environmental degradation related to natural resource extraction, such as mining and forestry, constitute great threats to the traditional lifestyles and cultures of indigenous peoples of the Arctic. Climate change has an impact on all aspects of life in the Arctic region, from traditional subsistence activities, including hunting, fishing, reindeer husbandry, farming, gathering and food sovereignty, to community health. The melting permafrost, flooding and storm surges progressively destroy village sanitation, drinking water and other infrastructure in many Arctic communities.

4. As climate change reduces sea ice in the Arctic region, the Arctic seabed is increasingly the subject of competing State claims focused on securing control over resources, estimated to include 25 per cent of the world's undiscovered oil and gas reserves. Increased economic activity in the Arctic is likely to result in further environmental degradation as a result of oil, gas and mineral extractive processes. The resultant increased traffic and pollution, along with the influx of new people, will have an impact on the lives of the indigenous peoples of the region.

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5. Indigenous peoples in the Arctic region also face a broad range of challenges regarding economic and social development, human rights, education, health and culture. For example, in relation to development and health, life expectancy is shorter and infant mortality rates are higher among indigenous Arctic residents in Alaska, the United States of America, northern Canada and Greenland when compared with those of non-indigenous residents of Arctic countries. Similarly, indigenous residents of Alaska, northern Canada and Greenland have higher mortality rates from injury and suicide as well as higher hospitalization rates for infants with pneumonia, tuberculosis, meningitis and other respiratory infections.

6. The Permanent Forum notes that the Greenland-Danish Self-Government Commission submitted its report on self-government on 6 May 2008. The main task of the Commission has been to submit draft legislation regarding a self-government arrangement for Greenland. A referendum was held in Greenland on 25 November 2008 concerning the act and the process leading up to its entry into force. The Permanent Forum welcomes the successful passage of the act through the Danish Parliament on 19 May 2009.

7. The Permanent Forum acknowledges the close and growing cooperation among the Arctic States and the indigenous peoples in the Arctic.

8. The Permanent Forum International Polar Year initiative to undertake a reindeer herders vulnerability network study will focus on understanding the adaptive capacity of reindeer pastoralism to climate variability and change. The study, which has been endorsed by the Arctic Council, is being managed by a former chairman of the Permanent Forum, Professor Ole Henrik Magga.

9. The Permanent Forum confirms that the rule of law is a prerequisite for peaceful regional development and recalls that an extensive legal framework applies to the Arctic Ocean, including, notably, the United Nations Convention on the Law of the Sea. This framework provides a foundation for responsible management of this ocean.

10. The Permanent Forum recalls the relevant United Nations resolutions concerning national institutions for the protection and promotion of human rights, including the annex to General Assembly resolution 48/134 (the "Paris Principles"), recognizing the significant role that institutions at the national level can play in promoting and protecting all human rights and fundamental freedoms and in developing and enhancing public awareness of all human rights and fundamental freedoms.

11. In this connection, the Permanent Forum welcomes the initiative of the Government of Norway to establish the Gáldu Resource Centre for the Rights of Indigenous Peoples. The resource centre will distribute information about human rights and fundamental freedoms of indigenous peoples, in conformity with the spirit of the Paris Principles regarding national institutions for the promotion and protection of the rights of indigenous peoples. The Centre is an independent body, governed by its own board, which includes indigenous peoples.

12. The Permanent Forum urges all Arctic States to endorse and implement the United Nations Declaration on the Rights of Indigenous Peoples.

13. The Permanent Forum urges the Nordic States to ratify, as soon as possible, the Nordic Saami Convention, which could set an example for other indigenous peoples whose traditional territories are divided by international borders.

14. The Permanent Forum urges States to financially resource, empower and support local Arctic indigenous communities in order to give indigenous youth and women, together with other members of the communities, the opportunity to secure and develop their cultures.

15. The Permanent Forum calls upon the Arctic Council to provide the indigenous permanent participants in the Council with adequate financial resources, enabling them to effectively participate in all relevant activities of the Council.

16. The Permanent Forum calls upon the Arctic States to provide financial resources to indigenous peoples of the Arctic for the purpose of building a partnership to enable them to adapt to climate change.

17. The Permanent Forum recommends that the Arctic Council formally engage with the United Nations Educational, Scientific and Cultural Organization (UNESCO) to jointly follow up the international expert meeting on scientific, social, cultural and education challenges of climate change in the Arctic (3-6 March 2009 in Monaco).

18. The Permanent Forum calls upon Member States to analyse the compatibility of domestic laws with the United Nations Declaration on the Rights of Indigenous Peoples, in particular with a view to harmonize laws dealing with Arctic renewable resources upon which indigenous peoples depend, and to include the indigenous peoples of the Arctic in a direct and meaningful way in this analysis.

19. The Permanent Forum recognizes the harm that the recent decision of the European Parliament regarding the seal product import ban may cause Inuit in the Arctic, and calls upon the European Union to rescind this import ban and, failing that, to enter into direct and meaningful dialogue with the Inuit Circumpolar Council to discuss ways of moving forward. Furthermore, the European Union must make decisions that affect both European and non-European indigenous peoples, taking into account their right to free, prior and informed consent.

20. The Permanent Forum welcomes the document of the Commission of the European Communities (COM (2008)), Communication from the Commission to the European Parliament and the Council: The European Union and the Arctic Region, delivered in Brussels on 20 November 2008 and urges the European Union to begin implementing the recommendations relevant to indigenous peoples from this document.

21. The Permanent Forum decides to appoint Mr. Lars Anders-Baer, a member of the Permanent Forum, as a special rapporteur to undertake a study to determine the impact of climate change adaptation and mitigation measures on reindeer herding.

22. The Permanent Forum decides to appoint Mr. Carsten Smith and Mr. Michael Dodson, members of the Permanent Forum, as special rapporteurs to undertake a study about indigenous fishing rights in the seas.

23. The Permanent Forum welcomes the following message from the Indigenous Peoples' Global Summit on Climate Change, held in Anchorage, Alaska, from 20 to 24 April 2009, contained in the Anchorage Declaration: "We offer to share with

humanity our Traditional Knowledge, innovations and practices relevant to climate change, provided our fundamental rights as intergenerational guardians of this knowledge are fully recognized and respected. We reiterate the urgent need for collective action".

24. The Permanent Forum calls on the United Nations Environment Programme (UNEP) to conduct a fast track assessment of short-term drivers of climate change, specifically black carbon, with a view to initiating negotiation of an international agreement to reduce emissions of black carbon.

25. The Permanent Forum notes that the Governments of Finland and Sweden have been repeatedly called upon by different United Nations treaty bodies to clarify and recognize recognized Sámi rights to land, fishing, hunting and reindeer grazing. The Permanent Forum notes that in Norway the Sámi Parliament has not given its free, prior and informed consent to the draft Mineral Act.

26. The Permanent Forum urges the Governments of Finland and Sweden to recognize Sámi rights to land, fishing, hunting and reindeer grazing in compliance with the Convention No. 169 of the International Labour Organization (ILO) and the United Nations Declaration of the Rights of Indigenous Peoples.